

**IN THE  
MISSOURI SUPREME COURT**

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<b>STATE OF MISSOURI,</b>	)	
	)	
<b>Respondent,</b>	)	
	)	
<b>vs.</b>	)	<b>No. SC93321</b>
	)	
<b>BRUCE PIERCE,</b>	)	
	)	
<b>Appellant.</b>	)	

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**APPEAL TO THE MISSOURI SUPREME COURT  
FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI  
22<sup>ND</sup> JUDICIAL CIRCUIT, DIVISION 21  
THE HONORABLE THOMAS C. GRADY, JUDGE**

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**APPELLANT'S SUBSTITUTE REPLY BRIEF**

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## **REPLY ARGUMENT**

**I. The trial court erred in denying Bruce’s motion to dismiss and in retrying his case four terms after the first trial resulted in a mistrial due to a hung jury, because Article I, § 19 of the Missouri Constitution limits the Circuit Court’s lawful authority to retry such cases, in that the Circuit Court is only allowed to retry the accused within the same or the next term of court.**

### Standard of Review

The State argues that the standard of review in this case should be an abuse of discretion standard (Resp. Br. at 9). It attempts to differentiate Bruce’s case from *State v. Nichols*, 205 S.W.3d 215, 219 (Mo. App. S.D. 2006) by claiming that *Nichols* presented a jurisdictional question and Bruce’s case does not. However, *Nichols* did not deal with subject matter or personal jurisdiction, and thus was not a jurisdictional case. *Id.*; *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249 (Mo. banc 2009). Therefore, the State’s analysis is flawed and the de novo standard of review should apply.

### Analysis

The State complains that “Appellant points to no authority that failure to be brought to retrial within a specified time is ‘double jeopardy.’” (Resp. Br. 21). However, the State fails to point to any authority that shows the failure to be brought to retrial within the terms of court specified in Article I, §19 of the Missouri Constitution does not violate Missouri’s double jeopardy provision. This is because this issue is one of first impression—the Court’s decision in this case will resolve this matter one way or the other.

Again and again the State attempts to cast Mr. Pierce's claim as a speedy trial claim. It is not. Article I, Section 18(a) of the Missouri constitution provides that "in criminal prosecutions the accused shall have the right to...a speedy public trial by an impartial jury of the county." Bruce does not now, nor has he ever, made any claim pursuant to that section. His claim is made exclusively pursuant to Article I, §19, which is entitled, "Self Incrimination and **Double Jeopardy**" (emphasis added).

Because this is not a speedy trial case, *Barker v. Wingo* is inapplicable. 407 U.S. 514 (1972). *State v. Ivester* is also a speedy trial case, so it is also inapplicable. 978 S.W.2d 762, 764 (Mo. App. E.D. 1998). The State attempts to argue this case should be treated as a speedy trial case because "to treat it otherwise would create an illogical and unnecessary distinction between a retrial due to a prior hung jury (which is the only provision covered in Article I, §19) and a retrial due to a reversal after direct appeal." (Resp. Br. 22). This analysis is flawed both on its face and when examined in light of the relevant constitutional provision.

When a retrial is necessary due to a hung jury, the only thing preventing the parties from retrying the case the very next day may be the availability of the parties or the availability of the necessary facilities. However, in the case of a direct appeal, there is a very real and necessary delay—the direct appeal itself. As Mr. Pierce's case itself demonstrates, direct appeals can take months or even years to resolve. Just obtaining the transcript can take an entire term of court. Then, because the direct appeal process takes months or years to complete, once a case is remanded it cannot be immediately retried. The prosecutor or public defender who tried the case may have moved on to a different

career in that eighteen month window. Witnesses and victims move. Police officers retire. And the delay caused by the direct appeal is unavoidable.

Even if there were not such a stark real world difference between retrial after a hung jury and retrial after a direct appeal, it would not matter. Article I, § 19 itself differentiates between the two. It states:

That no person shall be compelled to testify against himself in a criminal cause, nor shall any person be put again in jeopardy of life or liberty for the same offense, after being once acquitted by a jury; but if the jury fail to render a verdict the court may, in its discretion, discharge the jury and commit or bail the prisoner for trial at the same or next term of court; and if judgment be arrested after a verdict of guilty on a defective indictment or information, or if judgment on a verdict of guilty be reversed for error in law, the prisoner may be tried anew on a proper indictment or information, or according to the law.

The plain language of the provision differentiates between juries who cannot reach verdicts and juries who are reversed due to an error in law. Rational or not, that is what the provision says. Bruce asks that this court apply the provision as it is written, and reverse his convictions.

## **CONCLUSION**

Bruce requests that both of his convictions be reversed and he be discharged because of the violation of Article I, § 19 of the Missouri Constitution. If the trafficking conviction is not reversed because of that issue, he requests that it be reversed and remanded for a new trial due to the instructional error. If the resisting arrest conviction is not reversed due to the constitutional issue, Bruce request that conviction be reversed and due to insufficient evidence.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE AND COMPLIANCE**

I certify (1) that on August 12, 2013, that a copy of the foregoing was served on the Office of the Attorney General via the Missouri Electronic Filing System, (2) this brief includes the information required by Rule 55.03 and it complies with the page limitations of Rule 84.06 (3) this brief was prepared with Microsoft Word for Windows, uses Times New Roman 13 point font, and contains 1185 words, and (4) I scanned the document for viruses with Symantec Endpoint Protection Anti-Virus software and it is virus-free.

/s/ Roxanna A. Mason